

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 TRSE-00 EB-07 L-03 SS-15 INR-07 /043 W

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R 092009Z JAN 76

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC PRIORITY 2706

UNCLAS SECTION 1 OF 2 BOGOTA 0227

EO 11652: N/A

TAGS: EFIN, CO

SUBJ: COLOMBIANIZATION OF BANK

REF: 75 STATE 302576, STATE 000059, 75 BOGOTA 12082, 75

BOGOTA 11512

FOLLOWING IS TEXT OF BANK COLOMBIANIZATION BILL
AND UNOFFICIAL TRANSLATION. REGARDING REPORT REQUESTED
IN STATE 302576, THE IMPLEMENTING REGULATIONS FOR BILL HAVE
NOT BEEN ISSUED YET AND DUE TO HOLIDAY SEASON APPROPRIATE
OFFICIALS ARE NOT AVAILABLE FOR COMMENT. WE HOPE TO HAVE
SOME COMMENTS BY THE END OF NEXT WEEK ON THE BILL'S VARIOUS
AMBIGUITIES AND IMPLICATIONS IF THE ADMINISTRATION HAS ITSELF
THOUGHT THROUGH SOME OF THE QUESTIONS THE BILL RAISES.

EL CONGRESO DE COLOMBIA DECRETA:

ARTICULO 1. A PARTIR DE LA VIGENCIA DE LA PRESENTE
LEY, NO SE ADMITIRA NUEVA INVERSION EXTRANJERA DIRECTA EN
EL SECTOR DE LOS SEGUROS, CAPITALIZACION, BANCOS Y
OTROS ESTABLECIMIENTOS DE CREDITO Y DEMAS INSTITUCIONES
E INTERMEDIARIOS FINANCIEROS.

EXCEPTUASE DE LO ANTERIOR LA PROHIBICION LA INVERSION
DIRECTA EN MONEDA LIBREMENTE CONVERTIBLE, ORIGINARIA DE
PAISES MIEMBROS DEL ACUERDO DE CARTAGENA, SI SE HACE
EN NUEVOS BANCOS NACIONALES O DE CARACTER MIXTO DE CONFORMIDAD
CON LO ESTABLECIDO EN ESTA LEY Y SIEMPRE QUE LA INVERSION
EN SU TOTALIDAD PERTENEZCA A NACIONALES DE UNO O MAS

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PAISES MIEMBROS DEL ACUERDO Y QUE ELLOS SE OTORGUE

TRATAMIENTO DE RECIPROCIDAD A LA INVERSION COLOMBIANA DIRECTA.

ARTICULO 2. LOS BANCOS EXTRANJEROS CON SUCURSAL ESTABLECIDA EN EL PAIS QUE DESEEN CONTINUAR PRESTANDO EL SERVICIO PUBLICO BANCARIO, DEBERAN TRANSFORMARLA EN EMPRESA MIXTA, MEDIANTE LA CONSTITUCION DE UN NUEVO BANCO EN EL CUAL NO MENOS DEL CINCUENTA Y UNO POR CIENTO DE LAS ACCIONES PERTENEZCA A INVERSIONISTAS NACIONALES.

EL GOBIERNO CONVENDRA CON LOS BANCOS EXTRANJEROS LAS CONDICIONES Y PLAZOS DE TRANSFORMACION SIN QUE ESTOS ULTIMOS PUEDAN EXCEDER DE TRES ANOS, CONTADOS A PARTIR DE LA VIGENCIA DE LA PRESENTE LEY.

ARTICULO 3. LOS NUEVOS BANCOS DE QUE TRATA EL ARTICULO 2 DE ESTA LEY, COLOCARAN EN FIDEICOMISO EN EL BANCO DE LA REPUBLICA LAS ACCIONES QUE PONGAN EN VENTA Y ESTAS NO PODRAN SER ENAJENADAS SINO CON LA PREVIA AUTORIZACION DE LA SUPERINTENDENCIA BANCARIA. LA SUPERINTENDENCIA AUTORIZARA CADA OPERACION DE VENTA, PREVIA COMPROBACION DE QUE EL ADQUIRENTE ES INVERSIONISTA NACIONAL Y DE QUE NO ES UNA DE LAS ENTIDADES POR ELLA CONTROLADA, O SUS FILIALES O SUBSIDIARIAS. CON EL FIN DE FACILITAR LAS OPERACIONES DE TRANSFORMACION DE QUE TRATA ESTA LEY, AUTORIZASE AL GOBIERNO PARA PERMITIR, PREVIO CONCEPTO DE LA JUNTA MONETARIA SOBRE LAS CONDICIONES DEL MERCADO DE CAPITALES PARA ABSORBER DICHAS ACCIONES, QUE LAS SOCIEDADES SUJETAS AL CONTROL DE LA SUPERINTENDENCIA BANCARIA QUE NO TENGAN PROHIBICION ESPECIAL DE ADQUIRIR ACCIONES BANCARIAS, PUEDAN POSEER HASTA EL 5 P/C DEL TOTAL DE LAS ACCIONES DE LOS BANCOS INTERNACIONALES.

EN LA DETERMINACION DE ESTE PORCENTAJE SE INCLUIRAN LAS ACCIONES QUE POSEAN TANTO LAS SOCIEDADES MATRICES COMO SUS FILIALES Y SUBSIDIARIAS.

TODA ENAJENACION QUE SE HAGA SIN LA AUTORIZACION DE LA SUPERINTENDENCIA BANCARIA O CONTRA LA PROHIBICION CONSAGRADA EN EL INCISO ANTERIOR, SERA INEFICAZ DE PLENO DERECHO,
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SIN NECESIDAD DE DECLARACION JUDICIAL.

ARTICULO 4. LAS SUCURSALES DE BANCOS EXTRANJEROS ACTUALMENTE ESTABLECIDOS EN EL PAIS QUE NO SE NO SE TRANSFORMEN DE ACUERDO CON LO PREVISTO EN EL ARTICULO 2 DE ESTA LEY, NO PODRAN REALIZAR, A PARTIR DEL 31 DE DICIEMBRE DE 1976 NEGOCIOS PROPIOS DE SU ACTIVIDAD Y SOLAMENTE ESTARAN AUTORIZADAS PARA EFECTUAR, BAJO LA

VIGILANCIA DE LA SUPERINTENDENCIA BANCARIA, AQUELLAS
OPERACIONES NECESARIAS PARA SU LIQUIDACION

ARTICULO 5. LA JUNTA MONETARIA PODRA REGLAMENTAR LAS
OPERACIONES BANCARIAS CONCERNIENTES AL COMERCIO INTERNACIONAL
CON EL FIN DE QUE ELLAS SE EFECTUEN UNICAMENTE A TRAVES
DE BANCOS Y CORPORACIONES FINANCIERAS ESTABLECIDAS EN
EL PAIS, ASI COMO LAS ACTIVIDADES DE LOS REPRESENTANTES
DE BANCOS EXTRANJEROS NO ESTABLECIDOS EN COLOMBIA,
DE CONFORMIDAD CON LOS TERMINOS Y LIMITES SENALADOS
EN EL ARTICULO 100 DE LA LEY 45 DE 1923.

ARTICULO 6. ENTIENDESE POR EMPRESA MIXTA LA CONSTITUIDA
EN COLOMBIA Y CUYO CAPITAL PERTENEZCA A
INVERSIONISTAS NACIONALES EN UNA PROPORCION QUE
FLUCTUE ENTRE EL CINCUENTA Y UNO POR CIENTO (51) Y EL
OCHENTA POR CIENTO (80), SIEMPRE QUE A JUICIO
DE LA SUPERINTENDENCIA BANCARIA, ESA PROPORCION SE REFLEJA
EN LA DIRECCION TECNICA, FINANCIERA, ADMINISTRATIVA Y
COMERCIAL DE LA EMPRESA.

ARTICULO 7. EL GOBIERNO DICTARA LAS MEDIDAS DE
CARACTER LABORAL A QUE HUBIERE LUGAR, PARA PONER A SALVO
LOS DERECHOS DE LOS TRABAJADORES AL SERVICIO DE LOS BANCOS
EXTRANJEROS, CUANDO ENTREN A CUMPLIRSE LOS
TERMINOS SENALADOS EN LA PARTE FINAL DEL ARTICULO - #5
6 3, 3) 4. ESTA LEY.

ARTICULO 8. DEROGASE EL INCISO 2. DEL ARTICULO 1. DEL
DECRETO EXTRAORDINARIO 2719 DE 1973.

ARTICULO 9. ESTA LEY RIGE DESDE SU SANCION.

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DADA EN BOGOTA. D. E., A LOS QUINCE DIAS DEL MES DE
DICIEMBRE DE MIL NOVECIENTOS SETENTA Y CINCO.

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ACTION ARA-10

INFO OCT-01 ISO-00 TRSE-00 EB-07 L-03 SS-15 INR-07 /043 W

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P 092009Z JAN 76

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC PRIORITY 2707

UNCLAS SECTION 2 OF 2 BOGOTA 00227

EO 11652 N/A

TAGS: EFIN, CO

SUBJ: COLOMBIANIZATIONS OF BANKS

REF: 75 STATE 302576, STATE 000059, 75 BOGOTA 12082,
75 BOGOTA 11512

THE CONGRESS OF COLOMBIA DECREES:

ARTICLE 1: AS OF THE DATE OF THE PRESENT LAW, NO NEW
DIRECT FOREIGN INVESTMENT WILL BE ADMITTED IN THE SECTORS
OF INSURANCE, CAPITALIZATION. BANKS AND OTHER CREDIT
ESTABLISHMENTS. FINANCIAL INSTITUTIONS AND INTERMEDIARIES.
DIRECT INVESTMENT IN CONVERTIBLE CURRENCIES FROM
MEMBER COUNTRIES OF THE CARTAGENA AGREEMENT SHALL
BE EXCEPTED FROM THE FOREGOING PROVIDED THE INVESTMENT
IS MADE IN NEW NATIONAL BANKS OR MIXED ENTERPRISES IN
ACCORDANCE WITH THIS LAW, PROVIDED ALSO THAT THE INVESTMENT
BELONGS TO NATIONALS OF ONE OR MORE MEMBERS OF THE AGREEMENT
AND THAT THE COUNTRY OF ORIGIN ACCORDS
RECIPROCITY TO DIRECT COLOMBIAN INVESTMENTS.

ARTICLE 2: THOSE FOREIGN BANKS WITH BRANCHES
ESTABLISHED IN THE COUNTRY WHICH DESIRE TO CONTINUE PROVIDING
BANKING SERVICES TO THE PUBLIC SHALL BE TRANSFORMED
INTO MIXED ENTERPRISES BY THE FORMING OF A NEW BANK IN
WHICH NATIONAL INVESTORS' PARTICIPATION IS NOT
LESS THAN 51 PERCENT.

THE GOVERNMENT WILL ARRANGE WITH THE FOREIGN BANKS ON
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THE TERMS AND CONDITIONS OF THE TRANSFORMATION PROVIDED
THAT IT WILL NOT EXCEED A THREE-YEAR PERIOD AS OF THE
DATE OF THE PRESENT LAW.

ARTICLE 3: THE NEW BANKS REFERRED TO IN ARTICLE 2 OF THE
PRESENT LAW WILL PLACE IN TRUST AT THE BANK OF REPUBLIC
THE SHARES TO BE SOLD AND THESE WILL NOT BE TRANSFERRED TO

A THIRD PARTY EXCEPT WITH THE PRIOR AUTHORIZATION OF THE OFFICE OF THE BANKING SUPERINTENDENT. THE OFFICE OF THE SUPERINTENDENT WILL AUTHORIZE EACH TRANSACTION UPON PREVIOUS VERIFICATION THAT THE ACQUIRER IS A NATIONAL INVESTOR AND NOT AN ENTITY, BRANCH OR SUBSIDIARY OF AN INSTITUTION SUPERVISED BY THE OFFICE OF THE SUPERINTENDENT. TO FACILITATE THE TRANSFORMATION STIPULATED BY THIS LAW, AND WITH THE ADVICE OF THE MONETARY BOARD REGARDING THE ABILITY OF THE CAPITAL MARKET TO ABSORB THE SHARES, THE GOVERNMENT IS AUTHORIZED TO PERMIT ENTERPRISES SUPERVISED BY THE OFFICE OF THE BANKING SUPERINTENDENT WHO ARE NOT SPECIFICALLY PROHIBITED FROM ACQUIRING BANKING SHARES, TO ACQUIRE UP TO FIVE PERCENT OF THE TOTAL SHARES OF THE FOREIGN BANKS. ALL SHARES OWNED BY PARENT COMPANIES AS WELL AS AFFILIATES AND SUBSIDIARIES WILL BE COUNTED TOWARD THIS PERCENTAGE. ANY SALE MADE WITHOUT THE OFFICE OF THE BANKING SUPERINTENDENT'S AUTHORIZATION OR CONTRARY TO THE PROHIBITION STIPULATED IN THE ABOVE CLAUSE, WILL BE INEFFECTIVE IN ALL RESPECTS WITHOUT JURIDICAL DECLARATION.

ARTICLE 4. AS OF DECEMBER 31 OF 1976, BRANCHES OF FOREIGN BANKS ALREADY ESTABLISHED IN THE COUNTRY THAT WILL NOT BECOME MIXED COMPANIES, ACCORDING TO ARTICLE 2 OF THE PRESENT LAW, CANNOT CONDUCT BUSINESS AND ARE AUTHORIZED TO CONDUCT, UNDER THE SUPERVISION OF THE OFFICE OF THE BANKING SUPERINTENDENT, ONLY ACTIVITIES RELATED TO THEIR LIQUIDATION.

ARTICLE 5. THE MONETARY BOARD CAN REGULATE INTERNATIONAL BANKING OPERATIONS SUCH THAT THEY WILL BE CONDUCTED ONLY THROUGH BANKS AND INVESTMENT COMPANIES ESTABLISHED IN THE COUNTRY. THE BOARD CAN ALSO REGULATE THE ACTIVITIES OF FOREIGN BANK REPRESENTATIVES NOT ESTABLISHED IN COLOMBIA, ACCORDING TO THE TERM AND

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CONDITIONS PROVIDED BY ARTICLE 100 OF LAW 45 OF 1923.

ARTICLE 6: A MIXED ENTERPRISE SHALL BE UNDERSTOOD TO BE AN ENTERPRISE WHOSE CAPITAL BELONGS TO NATIONAL INVESTORS IN A PROPORTION THAT FLUCTUATES BETWEEN 51 AND 81 PERCENT, PROVIDED THAT, IN THE JUDGEMENT OF THE OFFICE OF THE BANKING SUPERINTENDENT, THE PROPORTION IS REFLECTED IN THE TECHNICAL, FINANCIAL, ADMINISTRATIVE AND COMMERCIAL MANAGEMENT OF THE ENTERPRISE.

ARTICLE 7: THE GOVERNMENT WILL TAKE THE NECESSARY MEASURES TO PROTECT THE RIGHTS OF EMPLOYEES OF THE FOREIGN BANKS WHEN THE TERMS ESTABLISHED IN ARTICLES 2 AND 4 ARE PUT INTO EFFECT.

ARTICLE 8: CLAUSE 2 OF ARTICLE 1 OF EXTRAORDINARY
DECREE 2719 OF 1973 IS DELETED.

ARTICLE 9. THIS LAW SHALL TAKE EFFECT AS OF THE DAY
OF ITS APPROVAL.

GIVEN IN BOGOTA ON DECEMBER 15, 1975.
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